

341st

CONS

Need for Bonds

18 April 2002

*Home of the
Two-Time AFSPC
Top Dollar Champions!*



"Takin' Care of Business"





Agenda



- Definitions
- Types of Bonds
- Bid Guarantees
- Performance & Payment Bonds
- Other Types of Bonds
- Administration
- Acceptance of Bonds and Sureties
- Overview



Definitions



- **Bond:** Written instrument assuring fulfillment of the principal's obligations to a third party.
- **Consent of Surety:** An acknowledgement by a surety that its bond continues to apply to the contract as modified.
- **Penal Sum:** The amount of money specified in a bond as the maximum payment for which the surety is obligated.



Types of Bonds



- **Bid Guarantee**
 - Assures that a bidder will not withdraw a bid and will execute a contract and furnish required bonds
- **Performance Bond**
 - Secures fulfillment of contractual obligations
- **Payment Bond**
 - Assures payments to laborers and suppliers
- **Advance Payment Bond**
- **Patent Infringement Bond**



Bid Guarantee



- Not required unless performance and payment bonds are also required
- May use annual bid bonds for supply and service contracts
- Must use separate bid bonds for construction.
- May be waived by the COCO
- Shall be at least 20% of bid but not exceed \$3M
- Noncompliance may require rejection of the bid



Performance & Payment Bonds



- Construction Contracts
 - Required by Miller Act if over \$100K unless waived
 - Penal amount must equal 100% of the contract price and an additional amount equal to 100% of a price increase
 - Payment bond amount must be no less than the performance bond
 - For contracts over \$25K but under \$100K, the CO shall select at least two of the following protections:
 - Payment bond
 - Irrevocable letter of credit
 - Tripartite escrow agreement
 - Certificates of deposit
 - Other types of security
 - Must receive bonds before issuing NTP



Performance & Payment Bonds



- Other than Construction Contracts
 - Generally not required
 - Performance bonds may be required if over the SAT when:
 - Government property is to be provided to the contractor
 - A contractor merges with another concern and the government desires assurance that it is financially capable
 - Substantial progress payments are to be made
 - Contracts are for dismantling, demolition or removal
 - A payment bond is required only when a performance bond is required
 - Annual performance bonds only apply to non-construction contracts and shall provide a gross penal sum applicable to all covered contracts.



Other Types of Bonds



- **Advance Payment Bonds**
 - Required only when the contract contains an advance payment provision and a performance bond is not required
 - The CO determines the amount necessary to protect the Government
- **Patent Infringement Bond**
 - Used in contracts providing for patent indemnity only if:
 - A performance bond is not furnished
 - The financial responsibility of the contractor is unknown
 - The CO determines the penal sum



Acceptability of Bonds



- Check to ensure bonds are:
 - Properly signed and notarized
 - Conform with the solicitation/contract bonding requirements
 - Include an affidavit certifying power of attorney from an approved surety (surety bonds)
- Corporate sureties must appear on Treasury Dept. Circular 570
 - <http://www.fms.treas.gov/c570/c570.html>
 - The penal sum should not exceed the stated limit



Administration



- The following bond-related forms shall be used
 - SF 24, Bid Bond
 - SF 25, Performance Bond
 - SF 25-A, Payment Bond
 - SF 34, Annual Bid Bond
 - SF35, Annual Performance Bond
 - SF 1414, Consent of Surety
 - SF 1415, Consent of Surety and Increase of Penalty
 - SF 1416, Payment Bond for Other Than Construction
 - SF 1418, Performance Bond for Other Than Construction



Administration



- **Additional Bond and Security**
 - When secured from original surety, use SF 1415
 - When secured from new surety, use form according to the type of bond required
- **Consent of Surety**
 - Must be obtained if:
 - An additional bond is obtained from other than the original surety
 - No additional bond is required and the mod. is for out-of-scope new work or an in-scope change of more than 25% or \$50K
 - Required for a novation agreement
 - Use SF 1414 for all types of contracts



Administration



- **Furnishing Information**
 - The surety may be furnished info. on the project status
 - Subcontractors/suppliers may request surety info.
 - The CO shall provide a certified copy of the bond and contract to suppliers who have not been paid
- **Withholding Contract Payments**
 - Do not withhold because suppliers have not been paid
 - Withhold final payment if the government receives written notice from the surety that suppliers have not been paid
 - For withholdings incident to labor standards provisions, follow procedures in Part 22.



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- Acceptance of Bonds and Sureties
- Questions?